Supreme Court, U.S.
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No. 02-1302

IN THE

Supreme Court of the United States

BOARD OF EDUCATION OF THE TOWNSHIP OF BRANCHBURG,

Petitioner,

v.

BOARD OF EDUCATION OF THE BOROUGH OF SOMERVILLE; VITO A. GAGLIARDI; DAVID LIVINGSTON,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT BOARD OF EDUCATION OF THE BOROUGH OF SOMERVILLE

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QUESTION PRESENTED

Whether the "one person, one vote" principle of the Fourteenth Amendment applies to a state law that grants a minority vote to a school district that sends only its high school students to another school district across municipal electoral boundaries when the sending district has a majority of students at the high school.

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STATEMENT OF THE CASE

Introduction

In 1956, rather than build its own high school, Petitioner Board of Education of the Township of Branchburg ("Branchburg") chose to educate its high school students by sending them to Respondent Board of Education of the Borough of Somerville ("Somerville"). Branchburg pays tuition to Somerville for this service. The relationship is contractual and is sanctioned and governed by New Jersey state law. It is termed a "send-receive" relationship under New Jersey state education law.

Branchburg and Somerville are separate and independent boards of education, and operate separate and independent school districts. Each exists by virtue of comprehensive New Jersey state enabling legislation. Each board of education has the statutory responsibility to educate all eligible school age children that reside within its respective geographic boundaries. Qualified voters who reside within each separate municipality elect the members of each separate board of education.

Correspondingly, the Township of Branchburg and the Borough of Somerville are separate and independent municipal corporations with their own elected governments that enjoy general governmental and police powers, including property taxation, over all residents within their separate municipal boundaries. Qualified voters that live within each municipality elect their respective municipal officials.

The sole governmental link between Branchburg and Somerville is the contractual send-receive relationship for the education of Branchburg's high school students. Under the New Jersey send-receive statutory scheme, Branchburg is entitled to designate one additional representative to sit on Somerville's nine member board of education and vote on high school and certain district wide issues. This is the "representation statute." N.J. Stat. Ann. §§ 18A:38-8.1, 18A:38-8.2. Branchburg students comprise 53% of the total high school enrollment.

Branchburg sued in federal district court for proportional representation on the Somerville board. The district court held the representation statute unconstitutional as applied because Branchburg has a majority of students at the Somerville high school, but only ten percent of the vote. The district court's remedy, though, increased Branchburg's membership on Somerville's board from just one to six. Branchburg, consequently, was granted forty percent of the total vote by the district court. The Third Circuit reversed. *Board of Education of the Township of Branchburg v. Livingston*, 312 F.3d 614 (3d Cir. 2002); App. 1a.

A different Third Circuit panel reached the same conclusion in a separate but "nearly identical" case interpreting New Jersey's send-receive statute. *English v. Board of Education of Boonton*, 301 F.3d 69 (3d Cir. 2002); *see* App. 18a. The district court in *English* granted petitioner a precise proportional voting majority. *See* 161 F. Supp. 2d 344, 347-348 (D.N.J. 2001). The Third Circuit reversed. This Court denied *certiorari*. 123 S. Ct. 853 (2003).

The New Jersey Send-Receive Statutory Scheme

In New Jersey, a school district may choose to educate its children in one of three ways: (1) build, maintain and operate its own school system in whole or in part; (2) form a regional school district with another school district or districts in whole or in part; or (3) enter into a send-receive relationship with another school district in whole or in part. This statutory scheme provides maximum flexibility to local school districts in devising the best methods to educate their children, subject to New Jersey's state constitutional mandate for its legislature to provide a "thorough and efficient system of free public education." N.J. Const. Art. VIII, § IV, ¶ 1.

For example, a school district may elect to own and operate its own grammar schools while choosing to send its high school students on a tuition basis to another school district. This is Branchburg's choice.

A school district could also form a limited purpose or an all purpose regional school district with others. A limited purpose school district could comprise elementary schools, junior high schools, vocational schools, or other particular educational services or facilities. N.J. Stat. Ann. § 18A:13-2b. A regional school district is a separate and independent municipal corporation under New Jersey state law. When two or more school districts form a regional school district, a new governmental entity arises. *See* N.J. Stat. Ann. §§ 18A:13-3, 18A:13-48; *Township of Marlboro v. Board of Education of the Freehold Regional High School*, 992 F. Supp. 756 (D.N.J. 1998).

This is to be distinguished from a send-receive relationship where two separate governmental entities are bound together in a contractual relationship authorized and governed by state law. *See Board of Education of the Borough of Englewood Cliffs v. Board of Education of the City of Englewood*, 257 N.J. Super. 413, 475, 604 A.2d 914, 948 (N.J. Super., App. Div. 1992), *aff'd*, 132 N.J. 326, 625 A.2d 483 (Sup. Ct. 1993), *cert. denied*, 510 U.S. 991 (1993); *Borough of Sea Bright v. New Jersey Department of Education*, 242 N.J. Super. 225, 232-233, 576 A.2d 331, 335 (N.J. Super., App. Div.), *cert. denied*, 127 N.J. 320, 604 A.2d 596 (Sup. Ct. 1990). The sending district pays tuition to the receiving district for the "actual cost" of the students enrolled. N.J. Stat. Ann. § 18A:38-19.

In 1995, the New Jersey legislature enacted laws to grant certain sending districts a voice on the receiving district's board of education. N.J. Stat. Ann. §§ 18A:38-8.1 and 18A:38-8.2. Prior to the adoption of the representation statute in 1995, a sending district had no voice on the receiving district's board of education, regardless of its student body percentage.

The power to designate a representative to sit on a receiving district's board of education is triggered if the sending district's pupils comprise at least ten percent of the total enrollment of the pupils in the grades of the receiving district in which the pupils of the sending district will be enrolled. N.J. Stat. Ann. § 18A:38-8.2a (2). The statute curtails the representative's voting rights to matters that concern the sending district's pupils. N.J. Stat. Ann. § 18A:38-8.1a to d.

The sending district's representative is not directly elected by either district's voters to serve in that capacity. Rather, the sending district's elected board of education annually designates which of its board members shall sit as the representative on the receiving district's board. N.J. Stat. Ann. §§ 18A:38-8.1; 18A:38-8.2d. There is no direct electoral representation.

A send-receive contractual relationship may be terminated by either party upon application to and approval by the New Jersey state commissioner of education.

> Prior to submitting an application the district seeking to sever the relationship shall prepare and submit a feasibility study, considering the educational and financial implications for the sending and receiving districts, the impact on the quality of education received by pupils in each of the districts, and the effect on the racial composition of the pupil population of each of the districts. The commissioner shall make equitable determinations based upon consideration of all the circumstances, including the educational and financial implications for the affected districts, the impact on the quality of education received by pupils, and the effect on the racial composition of the pupil population of the districts. The commissioner shall grant the requested change in designation or allocation if no substantial negative impact will result therefrom.

N.J. Stat. Ann. § 18A:38-13.

The send-receive relationship is described as a contract between two school districts for educational services to be provided in exchange for a fixed tuition payment. "Unlike an ordinary contract, however, termination of a sending-receiving relationship is subject, not just to the desires of the parties, but also to the approval of the Commissioner of Education." *Englewood Cliffs*, *supra*, 257 N.J. Super. at 457-458, 608 A.2d at 939. "[S]ending and receiving districts remain distinct political entities which enter contracts for educational services under the supervision of the Commissioner of Education." *Sea Bright*, *supra*, 242 N.J. Super. at 233, 576 A.2d at 335.

The History of the Branchburg and Somerville Send-Receive Relationship

In 1975, Branchburg unsuccessfully sought to sever its contractual send-receive relationship with Somerville. *Board of Education of the Township of Branchburg v. Board of Education of the Borough of Somerville*, 173 N.J. Super. 268, 270, 414 A.2d 259, 260 (N.J. Super., App. Div. 1980); *see* App. 13a-14a. According to the state court decision, Branchburg and Somerville formalized their send-receive agreement in writing in 1956. Although the agreement expired in 1965, the relationship continued without a formal written renewal agreement pursuant to the enabling send-receive statute. *Id.* at 270-271, 414 A.2d at 260; N.J. Stat. Ann. § 18A:38-13. The state appellate court concluded that "a severance would . . . break up a well-run high school and produce two high schools of lesser quality. *Ibid.*, 173 N.J. Super. at 276, 414 A.2d at 263.

By the time the severance litigation concluded in 1980, Branchburg argued that regionalization was not a viable solution. *Id.* The court also noted that in 1972 Branchburg voters defeated a bonding proposal to construct a new high school. *Id.* at 271, 414 A.2d at 260. Accordingly, Branchburg commenced litigation to sever without any assurance that its voters would approve construction of a new high school.

New Jersey's commissioner of education characterized Branchburg's lack of direct representation on the Somerville board as a matter for "legislative review and change, not administrative action." *Id.* at 273, 414 A.2d at 261. At the time, Branchburg had no voice or vote on the Somerville board.

The severance statute under review at the time Branchburg filed its previous action is substantively different than that in existence today. The statute previously provided that a send-receive relationship could be severed upon a showing of "good and sufficient reason." Applying this standard, the commissioner of education would permit severance only if the benefit to the petitioning district outweighed the claims of the defending district. In 1986, the state legislature adopted a "no substantial negative impact" standard. The commissioner of education must now weigh and balance a number of factors, including financial, racial composition and educational impact. *See generally Englewood Cliffs, supra*, 257 N.J. Super. at 459-60, 608 A.2d at 939-41.

Branchburg never again formally sought severance from Somerville under the statute, even under the revised statutory standard.

In 1996, Branchburg and Somerville explored the feasibility and desirability of creating an all purpose K-12 regional school district. The experts retained by each side advised against the proposal. In 1999, in response to an order of the district court in this case, Branchburg explored the creation of a limited purpose 9-12 (high school) regional school district. The study, commissioned by Branchburg, recommended against the proposal because of the adverse financial impact to Somerville. *See* App. 14a-15a.

Dissatisfied with the representation statute, Branchburg seeks a judicial rather than political solution. Elected local government units in New Jersey change each year with new personalities, priorities, positions, populations and goals. Branchburg may or may not feel satisfied for the time being with sending its high school students to Somerville. It may wish to sever the relationship in the future. The send-receive statute provides Branchburg the right to apply to the commissioner of education to do so. Somerville too may seek severance as it once intended to do in 1970. *Ibid.*, 173 N.J. Super. at 271, 414 A.2d at 260.

REASONS FOR DENYING THE PETITION

The Court's holding in *Holt v. City of Tuscaloosa*, 439 U.S. 60 (1978), is dispositive of petitioner's constitutional claims. *Holt* recognizes that a state may restrict the voting franchise to the residents of a local governmental unit. Under the facts presented, petitioner does not have the right to vote across geographic lines in another non-contiguous municipality.

Petitioner's reliance on *Hadley v. Junior College District of Metropolitan Kansas City, Missouri*, 397 U.S. 50 (1970), and *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1960), is misplaced. The plaintiffs in *Hadley* were residents and taxpayers of the Kansas City School District, one of eight separate school districts which combined to form the Junior College District of Metropolitan Kansas City. As such, the *Hadley* plaintiffs resided in the junior college district and were eligible to vote for the members of the junior college district board. *Kramer* invalidated a state education statute that limited the right to vote to those who had property interests or children in the school district, to the exclusion of all other residents. The common thread in *Hadley* and *Kramer* is that the aggrieved non-voters were residents of the governmental unit.

In this case, petitioner seeks an unwarranted extension of the "one person, one vote" principle.

I. THERE IS NO CONFLICT AMONG THE CIRCUIT COURTS OF APPEAL REGARDING THE APPLICATION OF *HOLT*.

Holt refused to extend the "one person, one vote" principle to non-residents of a governmental unit. As in *Holt*, the cases relied on by petitioner here "in each case denied the franchise to individuals who were physically resident within the geographic boundaries of the governmental entity concerned." 439 U.S. at 68.

> No decision of this Court has extended the "one man, one vote" principle to individuals residing beyond the geographic confines of the governmental entity concerned, be it the State or

> its political subdivisions. On the contrary, our cases have uniformly recognized that a government unit may legitimately restrict the right to participate in its political processes to those who reside within its borders.

Id. at 68-69.

Under *Holt*, the one person, one vote principle is implicated only when the voting district is "exercising precisely the same governmental powers over [non-residents] as it does over [residents]." *Id.* at 72 n.8. This is so even if the voting district's actions have a significant, heavy or dramatic impact on non-residents. *Id.* at 69-70. Somerville's exercise of authority over Branchburg is quite limited, and does not nearly coincide with its authority over its own residents. *Id.*

The Third Circuit recently decided a virtually identical case challenging New Jersey's representation statute in this send-receive statutory scheme. *English v. Board of Education of Boonton*, 301 F.3d 69 (3d Cir. 2002), *cert. denied*, 123 S. Ct. 852 (2003); *see* App. 18a. These decisions must be read *in para materia*. Petitioner, nonetheless, claims a "crucial" distinction between *Branchburg* and *English*: the Branchburg board of education once attempted to sever the relationship, while the sending district in *English* did not. Pet. at 14-15 n.2; App. 18a. This is a distinction without a difference under *Holt*. As the opinion below stated:

> Our conclusion here that the possibility of severance does not counsel a different result than in *English* is consistent with the holdings in both *Holt* and *Little Thunder. In* Holt, Tuscaloosa

> exerted its police and sanitary regulations and business licensing requirements over Holt, a small town located beyond Tuscaloosa's city limits. 439 U.S. at 61-62. There was no indication that Tuscaloosa's powers were limited in time or that Holt could take action to escape from Tuscaloosa's extraterritorial powers. However, despite the seemingly permanent nature of Holt's situation, the Supreme Court held that it did not violate the one person, one vote principle of the Fourteenth Amendment. *Id.* at 68-70.

App. 23a.

Moreover, like the sending district in *English*, Branchburg retains the statutory right to apply for severance in the future. The fact that Branchburg sought severance over twenty five years ago does not preclude a future request. As mentioned, many years have elapsed and the statutory standard has changed in the interim. Even if, however, Branchburg cannot gain severance now or in the future, "[its] inability to sever the relationship does not affect the limited nature of Somerville's extraterritorial powers." App. 21a. As in *Holt*, the fact that the non-voting district cannot extricate itself from the relationship is not a "deciding factor." App. 23a. Somerville concedes the adhesive nature of a send-receive relationship because only the state commissioner of education can authorize severance after consideration of the statutory factors. This reality does not, however, alter the minimal governmental powers Somerville exercises over Branchburg in the education of its high school students.

The Third Circuit in *English* noted the following factors in addressing the relatively limited extraterritorial impact of the receiving district:

> 1. The receiving district controls only four of thirteen years of a child's education.
>
> 2. The sending district has its own board of education elected by its own residents for the governance of its K-8 affairs.
>
> 3. The sending district does have a voice on the receiving district's board of education.
>
> 4. The sending district does not have the same vested interest in the long-term affairs of the receiving district (e.g., capital improvements and employee pension plans).
>
> 5. Because the sending district's representative may vote on certain receiving district wide matters, it makes sense to preserve control in the receiving district.

301 F.3d at 80, 82. The same factors apply here. App. 20a-21a.

Mixon v. Ohio, 193 F.3d 389 (6th Cir. 1999), upheld an Ohio remedial education state statute that permitted the Mayor of Cleveland to appoint board of education members who exercised extraterritorial authority over non-residents who did not vote in Cleveland elections. As did the Third Circuit in *English*, the court in *Mixon* relied on *Holt* and distinguished petitioners' reliance on *Kramer v. Union Free*

School District No. 15, 395 U.S. 621 (1969). *Mixon*, 193 F.3d at 405-406. The *Mixon* court stated:

> Residency is the key element in determining whether legislation violates the one-person, one-vote doctrine.
>
> . . . .
>
> *Holt* . . . illustrates that non-residents do not necessarily have the right to vote in a city election simply because the city has some limited authority over the non-residents.
>
> . . . .
>
> *Kramer* [on the other hand] refers to "residents" within the school district who lack the right to vote.

Id. at 405. *See also Hawkins v. Johanns*, 88 F. Supp. 2d 1027, 1043, 1046-47 (D. Neb. 2000).

Petitioner states that this Court should resolve the "tension" between *Holt* and the decision below. Petitioner asserts that the Third Circuit ignored that aspect of *Holt* that mentioned that strict judicial scrutiny should apply to voting cases where non-residents are subject to "important aspects of state powers." Pet. at 9-10; *see* App. 20a; *see Holt*, *supra*, 439 U.S. at 72 n.8. Petitioner implies that the Third Circuit somehow "overlooked" its argument that the facts of this case warrant the conclusion that Somerville exercises "important aspects of state powers" over Branchburg. Pet. 10-11. This contention mischaracterizes the findings and holding below, and that in *English*, *supra*. Petitioner creates

the impression that the Third Circuit disregarded this aspect of *Holt*, and that the Sixth Circuit traversed beyond that contemplated by *Holt*. Pet. at *id.*, 10 n.2. *See Mixon*, *supra* 193 F.3d at 405; *Duncan v. Coffee County*, 69 F.3d 88 (6th Cir. 1995).

The holding below and the decision in *English* are straightforward applications of *Holt*. As did the Third Circuit, *Holt* readily distinguished *Little Thunder v. South Dakota*, 518 F.2d 1253 (8th Cir. 1975), and *Evans v. Cornman*, 398 U.S. 419 (1970). 439 U.S. at 72 n.8. In *Little Thunder*, the court struck down on equal protection grounds a state statute that denied the right to vote to residents of unincorporated counties annexed to incorporated counties. An incorporated county exercised the same governmental powers over the residents of the unincorporated county as it did on its own residents. Petitioner seems to concede that *Little Thunder* does not apply here because Somerville exercises control only over Branchburg's high school students, and nothing else. Pet. 9.

In *Evans*, residents of a federal enclave were denied the right to vote in Maryland elections. These residents were directly affected by Maryland's criminal laws, spending and taxation, unemployment and workmen's compensation, and automobile licensing and registration requirements. Additionally, they were subject to the jurisdiction of Maryland's courts, and their children were enrolled in the Maryland public schools. *Id.* at 424. Justice Marshall stated:

> In nearly every election, federal, state and local, for offices from the Presidency to the school board, and on the entire variety of other ballot

> propositions, appellees have a stake equal to that of other Maryland residents. As the District Court concluded, they are entitled under the Fourteenth Amendment to protect that stake by exercising the equal right to vote.

Id. at 426. Thus, in *Evans*, the non-voters were deprived completely of the voting franchise "in important aspects of state powers" while actually residing in the voting district. Petitioner in this case selects this phrase from *Holt* and *Evans* and attempts to associate this language with the vastly different facts present here. Somerville hardly wields comparable influence over Branchburg as did Maryland over the residents of the NIH federal enclave at issue in *Evans*.

Moreover, the Third Circuit in *English* explained at length why New Jersey's send-receive statute is distinguishable from the education cases relied on by petitioner.

> While we do not gainsay that education is a governmental function of the utmost importance, *see Brown v. Bd. Of Educ.*, 347 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed.2d 873 (1954) (noting that "education is perhaps the most important government function of state and local governments"), we doubt the viability of that distinction in this context. At all events, we think that the extraterritorial power over education exercised by the [receiving district] is itself "limited" for the [following] reasons: the [receiving district] controls only four of the thirteen years of a [sending district] child's education, and the [sending district] possesses its own school board elected by [its] residents for the governance of its K-8 affairs.

> Moreover, [sending district] residents are not without any voice in the governance of [the high school], for state law . . . entitles the [sending district] to appoint a representative to the [receiving district's] board. That person may speak at Board meetings to convey [the sending district's] point of view. He or she also has a vote on matters that primarily affect the high school.

English, *supra*, 301 F.3d at 79-80.

II. THE NEW JERSEY REPRESENTATION STATUTE IS CONSTITUTIONAL UNDER A RATIONAL BASIS TEST.

Petitioner urges that strict scrutiny apply to the representation statute. Pet. 13. *Holt*, however, determined the standard to be "whether . . . the [state statute] bears some rational relationship to a legitimate state purpose." *Holt*, *supra*, 439 U.S. at 70. A statute is not subject to "strict scrutiny simply because it relates to education." *Mixon*, *supra*, 193 F.3d at 403. States are afforded "extraordinarily wide latitude" in allocating state legislative power to municipal corporations and experimenting with local government authority. *Holt*, 439 U.S. at 71.

The design, management and implementation of New Jersey's comprehensive statewide system of public education is vested in the state legislature, which is constitutionally obligated to provide a "thorough and efficient system of free public schools." N.J. Const. Art. VIII, § IV, ¶ 1. The state board of education supervises the education system with rule making authority while the state commissioner of education is its chief executive officer. N.J. Stat. Ann. §§ 18A:4-10;

18A:4-22 to -24; *see generally Jenkins v. Township of Morris School District*, 58 N.J. 483, 494, 279 A.2d 619, 625 (Sup. Ct. 1971). New Jersey's experiment with education is continuously evaluated and modified by the state legislature. The state judiciary insures that all legislation and implementing regulations comport with the "thorough and efficient" constitutional mandate. *See Abbott v. Burke*, 119 N.J. 287, 575 A.2d 359 (Sup. Ct. 1990).

For years, a sending district had no vote on a receiving district's board of education. This changed in 1995, when the representation statute was adopted. The legislature responded positively to complaints that a sending district had no voice in the education of its own students. In fact, a bill for proportional representation like that sought by Branchburg here was presented to the state legislature in 1994 (S-151), and was rejected in favor of the existing representation statute.

In upholding the constitutionality of the representation statute, the Third Circuit, in *English*, *supra*, 301 F.3d at 82, stated:

> "Rational relationship" review is, of course, a very deferential standard, under which "a law will be sustained . . . even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous." *Romer v. Evans*, 517 U.S. 620, 632, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996). So long as strict scrutiny is not implicated, states enjoy significant latitude in the design of local governments, for "the Constitution and this Court are not roadblocks in the path of innovation, experiment, and development among units of local governments."

> *Avery* [*v. Midland County*], 390 U.S. [474,] at 485 [(1968)]. Indeed, this deference to state legislative judgment is particularly appropriate in the realm of educational policy, where, as noted, "[t]he very complexity of the problems of financing and managing a statewide public school system suggests that 'there will be more than one constitutionally permissible method of solving them' and that, within the limits of rationality, 'the legislature's efforts to tackle the problems' should be entitled to respect." [*San Antonio Independent School District v.*] *Rodriguez*, 411 U.S. [1,] at 42, [93 S.Ct. 1278, 36 L.Ed.2d 16 (1973)], (quoting *Jefferson v. Hackney*, 406 U.S. 535, 546-547, 92 S.Ct. 1724, 32 L.Ed.2d 285 (1972)).

See App. 19a.

All sending districts in New Jersey, including Branchburg, and regardless of the percentage of students involved, retain the statutory right to seek severance, subject to the approval of the commissioner of education. N.J. Stat. Ann. § 18A:38-13. At the present time, Somerville does not think it prudent or wise for Branchburg to separate.

The judiciary is not a "super legislature" imposing its will on the elected representatives of the people. "State legislatures need the freedom to experiment with different techniques to advance public education and this need to experiment alone satisfies the rational basis test." *Mixon*, *supra*, 193 F.3d at 403. *See Sailors v. Board of Education*, 387 U.S. 105, 110-11 (1967). New Jersey's experiment with education continues and "nothing in the Equal Protection Clause of the Fourteenth Amendment requires that it try something new." *Holt*, *supra*, 429 U.S. at 75.

MISSTATEMENTS OF LAW AND FACT IN THE PETITION

1. In its "Question Presented," Petitioner inaccurately states that Branchburg parents, and others similarly situated, are *required by state law* to send their children to a neighboring school district. Pet. i; *see* Pet. 1, 14. The send-receive statute, N.J. Stat. Ann. § 18A:38-13, in fact permits withdrawal by a sending district, subject to the approval of the commissioner of education, if the statutory criteria are satisfied.

The opinion below assumed Branchburg could not extricate itself from Somerville for purposes of the constitutional analysis. App. 19a-23a.

2. There is no ambiguity in *Holt* about the circumstances when non-residents of one geographic unit may vote in the elections of another geographic unit. Nor is there any "tension" between *Holt* and the decision below. Pet. 1, 8.

3. Branchburg contends that its previous severance attempt distinguishes its situation from that in *English*. Pet. 14 n.2. The fact that Branchburg sought severance over twenty-five years ago is of no constitutional significance when applying the principles of *Holt*. App. 19a.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Petition be denied.

Respectfully submitted,

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